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ARMANEE TERRACE JOINT MANAGEMENT BODY v. SAUJANA TRIANGLE SDN BHD

HIGH COURT MALAYA, SHAH ALAM
SURAYA OTHMAN J
[CIVIL APPEAL NO: 12A-161-10-2014]
B 3 DECEMBER 2015

ADMINISTRATIVE LAW: *Statutory bodies – Decision – Letter by Commissioner of Buildings under Building and Common Property (Maintenance and Management) Act 2007 ('BCPA') – Whether letter emanated from statutory* C *provision and addressed dispute – Whether demanded compliance by person addressed to – Whether a decision under BCPA – Failure to appeal to State Authority against decision – Whether decision final and conclusive*

The respondent ('Saujana') was the developer of Armanee Terrace Condominium which consisted of two phases of development referred to as D ATC Block A and ATC Block B whilst the appellant was Armanee Terrace Joint Management Body ('JMB') of ATC Block A. According to the infrastructure plan, the main infrastructure for utilities connection to ATC Block B was located at ATC Block A. When the works at ATC Block A was completed and ATC Block B was being carried out, JMB refused entry or E access to Saujana to ATC Block A and obstructed Saujana from carrying out the infrastructure works. When the attempts to have meeting to discuss on the issue of access to ATC Block A for Saujana to carry out and complete the infrastructure works failed, Saujana referred the dispute to the Commissioner of Buildings ('COB'). Pursuant to a meeting between the F parties, the COB issued a letter dated 3 July 2014 stating the JMB should allow Saujana to have access to ATC Block A to carry out the infrastructure works. JMB disagreed with the contents of the COB's letter and refused to allow Saujana access to ATC Block A. However, JMB did not appeal against the decision. Hence, Saujana sought a declaration that the decision of the G COB in the letter dated 3 July 2014 was a decision pursuant to the Building and Common Property (Maintenance and Management) Act 2007 ('BCP Act') and was valid and binding on JMB. The Sessions Court decided in favour of Saujana but did not grant any damages or costs to Saujana. Hence, the appeal by Saujana on the issue of damages. On the other hand, JMB appealed against the decision of the Sessions Court. The issues for the court's H determination were: (i) whether the letter dated 3 July 2014 constituted an act or a decision by the COB within the scope and ambit of the BCP Act and thereby within the provision under s. 41 of the BCP Act; (ii) if so, whether a body aggrieved by the act or decision of the COB had to appeal against that action or decision to the State Authority within 14 days after being notified

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of the action or decision; and (iii) whether the failure to appeal within 14 days after being notified of the action or decision of the COB would render the action or decision by the COB as being final.

Held (dismissing JMB's appeal with no order as to costs; awarding damages to Saujana):

(1) The COB is an officer appointed by the State Authority pursuant to s. 3 of the BCP Act and is entrusted with the charge of the administration of the Act. The contents of the letter dated 3 July 2014 in its entirety constituted a decision of the COB pursuant to the BCP Act and it addressed the dispute between JMB, the appointed contractor and the developer (Saujana). It was a letter emanating from a statutory provision and in consequence, a letter which had a statutory force of law and as such demanded compliance by the person or body addressed to. (paras 21 & 25)

(2) If the dispute was unresolved, it would affect the whole development scheme and would result in the delay in the issuance of the strata titles to the whole development. The COB had addressed the dispute. The fact that the letter ended with the COB requesting JMB to give its fullest cooperation in allowing Saujana and the appointed contractor to have access to ATC Block A to complete the infrastructure works, did not dilute nor detract the letter from being a decision made under the BCP Act. The letter had to be read in its entirety and the full intent and force of the letter had to be appreciated *vis a vis* the BCP Act. The letter was therefore a decision made by the COB under the BCP Act and was binding and enforceable under the law. The first issue was thus answered in the affirmative. (paras 27 & 28)

(3) The BCP Act provides that any person or body aggrieved by any act or decision of the COB may, within 14 days after having been notified of the action or decision, appeal against that action or decision to the State Authority. JMB should have exhausted the internal remedies as provided under s. 41 of the BCP Act. The fact that JMB had failed to do so resulted in its abandoning its rights as provided under the BCP Act. Therefore, the decision of COB remain unchallenged and was final and conclusive. (paras 30 & 35)

Case(s) referred to:

Foo Yau Lim & Ors v. Dato' Han Joke Kwang & Anor [2014] 3 CLJ 959 CA ***(refd)***

Perbadanan Pengurusan Menara Gurney & Ors v. Pesuruhanjaya Bangunan, Majlis Perbandaran Pulau Pinang & Anor [2011] 6 CLJ 583 HC ***(refd)***

Legislation referred to:

Building and Common Property (Maintenance and Management) Act 2007, ss. 3, 41

Rules of Court 2012, O. 7, O. 28, O. 29, O. 92 r. 4

A *For the plaintiff - N Chandran, M Kalaichelvan & Ranjan Chandran; M/s Abd Halim Ushah & Assocs*
For the defendant - Jadadish Chandra; M/s Arbain & Co

[Editor's note: Appeal from Sessions Court, Shah Alam; Originating Summons No: B54-16-07-2014]

B *Reported by S Barathi*

JUDGMENT

Suraya Othman J:

C **Introduction**

[1] The plaintiff, Saujana Triangle Sdn Bhd ("Saujana") filed an Originating Summons No. B54-16-07-2014 under O. 7 and O. 28 of the Rules of Court 2012 (P.U. (A) 205/2012) ("RC 2012") in the Sessions Court for a declaration that the decision given by the Commissioner of Buildings
D ("COB") in the letter dated 3 July 2014 is a decision given pursuant to the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) ("BCP Act") and it is valid and binding on the defendant, Armanee Terrace Joint Management Body ("JMB"). Saujana sought compliance by JMB on the terms of the letter (decision) and also sought for an injunction
E under O. 29 of the RC 2012 against JMB from obstructing or preventing Saujana, its workers and agents from carrying out the said infrastructure works for a development known as Armanee Terrace Condominium.

[2] On 29 September 2014, the Sessions Court Judge ("SJ") made a decision favouring Saujana declaring that the decision of the COB dated
F 3 July 2014 is valid in law and is binding on JMB. The SJ proceeded to grant injunctions against JMB from obstructing Saujana, its workers or agents from access to Armanee Terrace Condominium Phase 1A, Block A ("ATC Block A") to facilitate the infrastructure works and utilities in connection with Armanee Terrace Condominium Phase 1B Block B ("ATC Block B"). The
G SJ did not however grant any damages or costs to Saujana. Saujana dissatisfied filed an appeal ("160 Appeal"). JMB, also dissatisfied, with the SJ's decision, filed an appeal ("161 Appeal").

[3] I heard both the appeals on 30 July 2015. I allowed the appeal by Saujana on the issue of damages. I then ordered that damages be assessed by
H the Registrar. The appeal on cost is however disallowed.

I dismissed JMB's appeal. The decision of the SJ is thus maintained except on the issue of damages. JMB, dissatisfied, appealed against my decision.

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Brief Facts

[4] Saujana is a subsidiary of MK Land Holdings Berhad (a public listed company) and the developer of a development known as Armanee Terrace Condominium ("ATC") in Damansara Perdana, Petaling Jaya, which consist of two phases of development referred to as ATC Block A and ATC Block B. Both ATC Block A and ATC Block B are developed on the land held under H.S. (D) 267030, No. PT 48040, Mukim Sungai Buloh, Daerah Petaling, Negeri Selangor.

[5] JMB is Armanee Terrace Joint Management Body of ATC Phase 1A, Block A (ATC Block A).

[6] According to the infrastructure plan, the main infrastructure for utilities connection in respect of power supply, telecommunication, water supply and other utilities to ATC Block B is located at ATC Block A.

[7] ATC Block A was completed by Saujana and vacant possession was delivered to the parcel owners sometime in September 2005. The Certificate of Fitness for Occupation was issued by the relevant authority to the parcel owners on or about 8 December 2005.

[8] ATC Block A and ATC Block B are part of the same development located on one title and currently the two blocks are being separated by a temporary hoarding fence due to the construction works being carried out at ATC Block B. The hoarding fence will be dismantled and taken down once ATC Block B is completed.

[9] ATC Block A and ATC Block B have their own respective common facilities as seen in the building and technical layout plans. The only facility shared is the squash, badminton and tennis courts located in a separate building altogether, standing on its own in a common area. The main infrastructure for the utilities connection for both ATC Blocks A and B is located in the common areas of ATC Block A.

[10] JMB had refused entry or access to Saujana to ATC Block A and obstructed Saujana from carrying out the said infrastructure works.

[11] There were several attempts between the parties to have a meeting to discuss the issue of access to ATC Block A for Saujana to carry out and complete the said infrastructure works but these attempts failed.

[12] Saujana then, by letter dated 24 January 2014, referred the dispute to the Commissioner of Buildings ("COB") for a resolution of the matter.

[13] On or about 16 May 2014, the COB conducted a meeting between the representatives of Saujana and JMB towards a settlement of the dispute. Pursuant to the meeting the COB issued a letter dated 3 July 2014, which

was addressed to JMB and copied to Saujana, stating that JMB should allow Saujana to have access to ATC Block A to carry out the said infrastructure works.

[14] JMB disagreed with the contents of the COB's letter and refused to allow Saujana access to ATC Block A to carry out the said infrastructure works. JMB however did not appeal to the State Authority under s. 41 of the BCP Act against the COB's decision as stated in the letter dated 3 July 2014.

[15] Saujana then filed an originating summons No. B54-16-07-2014 in the Sessions Court for a declaration that the decision given by the Commissioner of Buildings ("COB") in the letter dated 3 July 2014 is a decision given pursuant to the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) ("BCP Act") and it is valid and binding on Armanee Terrace Joint Management Body ("JMB"). Saujana sought compliance by JMB on the terms of the letter and also sought for an injunction against JMB from obstructing or preventing Saujana, its workers and agents from carrying out the said infrastructure works for a development known as Armanee Terrace Condominium.

The SJ made her decision on 29 September 2014 and both parties appealed against her decision. The present appeal is from JMB who is dissatisfied with my decision on 30 July 2015 affirming the decision of the SJ except on the issue of damages.

Saujana's Contention

[16] Saujana was represented by Datuk N Chandran, Mr M Kalaichelvan and Mr Ranjan Chandran. Saujana contended that the letter dated 3 July 2014 is a decision made by the COB under the BCP Act and since the Act is a creature of statute it is binding on JMB. Saujana contended that if JMB is aggrieved with the decision of the COB, JMB should have appealed against that decision under s. 41 of the said Act. JMB had failed to do so, thus the decision of the COB is final.

JMB's Contention

[17] JMB was represented by Mr Jadadish Chandra. Mr Jadadish Chandra did not dispute that JMB had received the letter dated 3 July 2014 but contended that the letter is merely advisory and not an act nor a decision within the meaning of s. 41 of the BCP Act. Mr Jadadish contended so since:

(i) the COB's letter does not mention the particular provision/section of the Act pursuant to which the decision is said to have been made;

(ii) the COB's letter does not specify the nature of the breach;

(iii) the COB's letter does not state the consequences of any breach of the COB's decision; and

(iv) the COB's letter did not state any punishment in the event of any breach of the "decision" by JMB.

[18] Issue To Be Decided By The Court

(a) Whether the letter from Ms Nor Shabani binti Johari as head of unit of COB, on behalf of COB Majlis Bandaraya Petaling Jaya dated 3 July 2014 and addressed to JMB and copied to Saujana, is an act or decision by the COB within the meaning of s. 41 of the Building and Common Property (Maintenance and Management) Act 2007 (Act 663), ie, the BCP Act;

(b) If yes, whether a body aggrieved by the act or decision of the COB has to appeal against that action or decision to the State Authority within 14 days after being notified of the action or decision; and

(c) Whether the failure to appeal within 14 days after being notified of the action or decision of the COB will render the action or decision by the COB as being final.

Decision Of The Court

[19] The issue is whether the said letter dated 3 July 2014 constitutes an act or a decision by the COB within the scope and ambit of the BCP Act and thereby within the provision under s. 41 of the said Act.

The Relevant Sections Applicable Under BCP Act

[20] Section 3 of the said Act states:

> Appointment of Commissioner of Buildings and other officers
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> 3.(1) The State Authority may, in respect of a local authority area or any other area, appoint an officer to be known as the Commissioner of Buildings and such other officers as may be necessary for the purposes of administering and carrying out the provisions of this Act.

[21] The COB thus is an officer appointed by the State Authority pursuant to s. 3 of the BCP Act and is entrusted with the charge of the administration of the said Act.

[22] Section 41 states:

> Appeals to the State Authority
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> 41. Any person aggrieved by any act or decision of the Commissioner under this Act may, within fourteen days after having been notified of the action or decision, appeal against that action or decision to the State Authority; and the decision of the State Authority shall be final and shall not be questioned in any court.

First Issue

Whether The Letter From Ms Nor Shabani Binti Johari As Head Of Unit Of COB, On Behalf Of COB Majiis Bandaraya Petaling Jaya Dated 3 July 2014 And Addressed To JMB And Copied To Saujana, Is An Act Or Decision By The COB Within The Meaning Of s. 41 Of The Building And Common Property (Maintenance And Management) Act 2007 (Act 663), ie, The BCP Act

[23] The COB's letter dated 3 July 2014 for convenience is reproduced below.

"KEJUJURAN DAN KETEKUNAN"

Ruj . Kami : MBPJ/030200/T/R2/COB/PJUB/K.Arm/07 Jld.4

Tarikh : 3 Julai 2014.

Armanee Terrace Joint Management Body
Pejabat Pengurusan
RK2-1-02, Armanee Terrace Condominium,
Jalan PJU 8/1,
Damansara Perdana,
47820 Petaling Jaya,
SELANGOR DARUL EHSAN.

Tuan,

ARMANEE TERRACE CONDOMINIUM (ATCO - KERJA-KERJA PENYAMBUNGAN INFRASTRUKTUR DI ATC BLOK A KE ATC BLOK B

Saya dengan hormatnya merujuk kepada perkara di atas.

2. Pentadbiran in telah dimaklumkan bahawa sehingga surat ini dikeluarkan, pihak JMB masih gagal untuk memberikan kerjasama kepada pihak pemaju dan kontraktor bagi menyiapkan pembinaan blok baru bagi Fasa 2 Armanee Terrace. Perbincangan secara bersama dengan semua pihak juga telah diadakan bagi menyelesaikan isu ini, namun ianya seperti tiada jalan penyelesaian.

3. Melalui perbincangan yang diadakan sebelum ini, pentadbiran ini telah dimaklumkan bahawa pembinaan blok baru in adalah merupakan 1 skim pemajuan yang sama dengan blok yang sedia ada, iaitu di atas 1 lot yang sama. Ini menjadikan hanya 1 JMB sahaja yang perlu diubuhkan bagi menjalankan kerja-kerja pengurusan dan penyenggaraan bangunan. Memandangkan pembangunan ini adalah merupakan pembangunan berfasa, maka pihak JMB tiada kuasa untuk menghalang mana-mana pihak untuk menyiapkan pembangunan ini dalam tempoh yang telah di tetapkan. Harus diingatkan, sekiranya pembinaan ini gagal disiapkan

dalam tempoh yang ditetapkan maka ianya akan memberi kesan bukan sahaja kepada pemaju dan pembeli di blok baru, sebaliknya ianya akan memberi kesan secara menyeluruh termasuk pembeli di blok yang sedia ada terutama dalam pengeluaran hak milik strata.

4. Sekiranya terdapat pertikaian yang masih belum diselesaikan antara pihak JMB dan pemaju, maka ianya harus diselesaikan secara berasingan tanpa melibatkan pembangunan fasa baru ini. Justeru itu, pihak tuan diminta untuk memberikan kerjasama sepenuhnya dan membenarkan kontraktor yang dilantik untuk memasuki bangunan bagi menyiapkan kerja-kerja penyambungan infrastruktur bagi blok baru sebelum tindakan undang-undang diambil oleh mana-mana pihak yang terlibat.

Sekian, terima kasih.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

tt.

(NOR SHABANI BINTI JOHARI)

Ketua Unit Pesuruhjaya Bangunan
b/p: Pesuruhjaya Bangunan
Majlis Bandaraya Petaling Jaya.

s.k. Datuk Bandar
Pesuruhjaya Bangunan
Majlis Bandaraya Petating Jaya.

Saujana Triangle Sdn Bhd,
No. 19, Jalan PJU 8/5H,
Perdana Business Centre,
Bandar Damansara Perdana,
47820 Petaling Jaya,
SELANGOR DARUL EHSAN. Tel : 03-7726 8866
(u.p: Encik Kamarulzaman bin Abu Bakar) Faks : 03-7727 4328

Fail JMB.

[24] The COB, as stated earlier is an officer appointed pursuant to s. 3 of the BCP Act and is entrusted with the charge of the administration of the said Act. In the letter, the COB, Ms Nor Shabani binti Johari stated:

(a) that the COB was informed that till date of the issuance of this letter JMB has failed to give its cooperation to the developer and the contractor to complete the construction of ATC Block B. There were meetings set up between parties to resolve this issue but there seems to be no resolution on the matter;

(b) from the previous meetings, the COB was informed that the construction of the new block (ATC Block B) forms part of the same development scheme, that is on the same lot (title) of land. This means that only one JMB need be established for the purpose of the administration and supervision of the buildings (ATC Block A and ATC Block B);

(c) Since this construction is done in phases (two phases), JMB has no power to obstruct or prevent any parties from completing the construction in the time prescribed. It must be reminded (Harus diingatkan) that if this construction (ATC Block B) failed to be completed in the time prescribed, then it may not only affect the buyers of ATC Block B but also the buyers of ATC Block A in that the issuance of the strata titles will be delayed; and

(d) If there are disputes that are still not resolved between JMB and the developer, then, these disputes should be resolved separately (harus diselesaikan secara berasingan) without affecting the construction of ATC Block B. As such, JMB is requested (diminta) to give its fullest cooperation and to allow the appointed contractor to have access to ATC Block A for the completion of the infrastructure works of ATC Block B before any legal action is taken by any parties concerned.

[25] On perusal of the said letter, I find that the contents in its entirety constitute a decision of the COB pursuant to the BCP Act. It is a letter which addresses a dispute between JMB, the appointed contractor and the developer (Saujana). It is a letter emanating from a statutory provision and in consequence a letter which has a statutory force of law and as such demands compliance by the person or body it addressed itself to.

[26] The contents of the letter is worded in quite strong language in the use of the words it must be reminded ("harus diingatkan"); should be resolved ("harus diselesaikan") and a warning by the COB that since the development of ATC Block A and ATC Block B forms part of the same development scheme which scheme comes under the same lot (one title) and a scheme which is done in phases (two phases - Phase 1 and Phase 2), there should only be one JMB for both ATC Block A and ATC Block B.

[27] The COB then went on to caution JMB that whatever dispute that are still not resolved between the parties should be resolved separately without affecting the completion of the construction of ATC Block B. The COB addresses the dispute at hand in that the obstruction or refusal by JMB in giving access to Saujana and the appointed contractor to ATC Block A will affect not only the buyers of the uncompleted units of ATC Block B but also the buyers of the completed units in ATC Block A, in that, if the dispute is unresolved, it will affect the whole development scheme and will result in the delay in the issuance of the strata titles to the whole development.

[28] Mr Jadadish Chandra submitted that the letter is merely advisory and not a decision under the BCP Act. This is so since the letter ends with a request for cooperation from JMB and are not worded in the strongest of language like spelling out punishment in the event of non-compliance. I disagree with Mr Jadadish Chandra on this. The fact that the letter ends with the COB requesting JMB ("pihak tuan diminta") to give its fullest cooperation in allowing Saujana and the appointed contractor to have access

to ATC Block A to complete the infrastructure works for ATC Block B does not dilute nor detract the letter from being a decision made under the BCP ACT and as such is binding and enforceable on JMB. As stated earlier, the letter has to be read in its entirety and the full intent and force of the letter has to be appreciated *vis-a-vis* the BCP Act. Thus I find the letter dated 3 July 2014, for all intents and purpose, is a decision made by the COB under the BCP Act and, is binding and enforceable under the law. As such the answer to the first issue is in the affirmative.

Second And Third Issues

If Yes, Whether A Body Aggrieved By The Act Or Decision Of The COB Has To Appeal Against That Action Or Decision To The State Authority Within 14 Days After Being Notified Of The Action Or Decision

Whether The Failure To Appeal Within 14 Days After Being Notified Of The Action Or Decision Of The COB Will Render The Action Or Decision By The COB As Being Final

[29] There is no dispute that JMB received the letter and refused to comply with the terms in the letter. JMB also did not appeal against the directions given in the letter within the specified time.

[30] The BCP Act provides that any person or body aggrieved by any act or decision of the COB may within 14 days after having been notified of the action or decision, appeal against that action or decision to the State Authority. Section 41 provides the right for JMB to raise its grievance by any act or decision of the COB and also very clearly states to whom the said grievance sought to be channelled to and within what period of time. In other words the BCP Act *vide* s. 41 provides for the remedy to an aggrieved person or body. Section 41 states:

> Appeals to the State Authority
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> 41. Any person aggrieved by any act or decision of the Commissioner under this Act may, within fourteen days after having been notified of the action or decision, appeal against that action or decision to the State Authority; and the decision of the State Authority shall be final and shall not be questioned in any court.

[31] As stated earlier, under s. 41 an appeal against the COB's decision has to be directed to the State Authority within 14 days after JMB had been notified of the COB's decision. If JMB is aggrieved by the decision of the COB, JMB has the right to appeal its grievances to the State Authority within 14 days. This JMB had failed to do. As such the COB's decision is final and conclusive.

[32] In *Perbadanan Pengurusan Menara Gurney & Ors v. Pesuruhanjaya Bangunan, Majlis Perbandaran Pulau Pinang & Anor* [2011] 6 CLJ 583, Jon Louis O' Hara J held that a person aggrieved by a decision of the COB has to appeal to the State Authority under s. 41 of the said Act before seeking for judicial review.

A Section 41 of the Building and Common Property (Maintenance and Management) Act 2007 provided for parties who were aggrieved by any act or decision of a Building Commissioner appointed under the Building and Common Property (Maintenance And Management) Act 2007 to appeal to the State Authority. This would include any act or decision made by the Building Commissioner under Strata Titles Act 1985 and
B Building and Common Property (Maintenance and Management) Act 2007. The applicants should have availed themselves to the remedy under s. 41 of the Building and Common Property (Maintenance and Management) Act 2007 rather than seek for judicial review.

[33] The *Menara Gurney*'s case above was re-affirmed by the Court of
C Appeal's case of *Foo Yau Lim & Ors v. Dato' Han Joke Kwang & Anor* [2014] 3 CLJ 959 where the Court of Appeal held that internal remedies provided under an Act must be exhausted first before a party can come to court.

[34] Thus in our instant case, the answers to both the second and third issues are in the affirmative. JMB has to appeal to the State Authority within
D 14 days after receiving the decision of the COB in the letter dated 3 July 2014 failing which the decision of the COB will be final.

[35] JMB should have exhausted the internal remedies as provided under s. 41 of the BCP Act by appealing the decision of the COB to the State
E Authority. The fact that JMB had failed to do so has resulted in it abandoning its right as provided under the BCP Act. As such, the decision of the COB is unchallenged and as stated earlier is final and conclusive.

[36] In light of the above, the appeal by JMB is dismissed with no order as to costs. The SJ's decision is maintained except on the issue on damages
F which should be awarded to Saujana which damages will be assessed by the Registrar. I also make two other consequential orders pursuant to the inherent powers conferred on me by O. 92 r. 4 of the Rules of Court 2012 (PU (A) 205/2012) that:

(a) JMB by itself, its servants, agents or otherwise is prohibited from
G obstructing or denying access to all relevant authorities involved into ATC Block A for the purpose of carrying out the infrastructure connection works to ATC Block B;

(b) the appellant by itself, its servants, agents or otherwise is prohibited from obstructing or denying the purchasers of the units of ATC Block
H B free access to the car parks and other common facilities as approved *via* ATC Block A.

JMB's appeal dismissed with no order as to cost.

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